Editor's note: Overruled to the extent inconsistent with J. Burton Tuttle, 49 IBLA 278, 87 I.D. 350 (Aug. 18, 1980)

ROBERT A. DAVIDSON

IBLA 73-183 Decided November 20, 1973

Appeal from decision (M-19939) of Montana State Office, Bureau of Land Management, rejecting preference right claim to lands offered at public sale.

Affirmed.

Public Sales: Generally ! ! Public Sales: Preference Rights

The filing of a certificate of the local recorder showing fee title of contiguous lands in A, and the filing of a contract for the sale of the lands from A to B, do not meet the criteria of 43 CFR 2711.4(b)(2) for proof of ownership in B.

Public Sales: Generally ! ! Public Sales: Preference Rights ! ! Rules of Practice: Appeals: Generally

A title opinion by a duly qualified attorney certifying under 43 CFR 2711.4(b)(2) that the vendee under a land sales contract holds the beneficial ownership of the land in fee simple may not be accepted when first proffered on appeal as timely submitted to show ownership of the "whole title in fee" of contiguous lands in order to establish a preference right to purchase land under the Public Lands Sale Act, as amended, 43 U.S.C. § 1171 (1970). The regulation requires that proof must be filed within the time allowed by the authorized officer, or within any extensions granted by him.

APPEARANCES: W. S. Mather, Esq., Moulton, Bellingham, Longo & Mather, Billings, Montana, for appellant; Hunter Patrick, Esq., Powell, Wyoming, for appellee.

OPINION BY MR. FISHMAN

Robert A. Davidson has appealed from a decision of October 17, 1972, by the Montana State Office, Bureau of Land Management, which rejected his preference right claim filed October 13, 1972, under the Public Lands Sale Act, as amended, 43 U.S.C. § 1171 (1970). A public sale was held August 24, 1972, for 40 acres, the SE 1/4 SE 1/4 sec. 17, T. 13 N., R. 19 E., M.P.M. At the sale Arthur L. Roehr was the high bidder in the amount of $ 2,200. The State Office suspended the sale for 30 days from the date of the sale to allow owners of contiguous land to assert a preference right to purchase at the high bid price plus the cost of publication. 43 CFR 2711.4(b).

On September 11, 1972, within the period allowed, Davidson asserted a preference right and tendered the price plus publication costs. The State Office issued a decision on September 25, 1972, requiring submission of "proof of ownership of the whole title to the contiguous lands * * * in fee on * * * September 24, 1972."

Within the time required, on October 13, 1972, Davidson filed a "Certificate of Ownership to Establish Preference Right for Public Sale," with which he included a copy of a contract for the sale of a ranch. In the certificate Davidson stated that "I [h]old a contract for deed from Lawrence A and Leona A Chamberlain dated June 8, 1960, who are the sole owners in fee simple of the following described lands: NE 1/4 SE 1/4 S. 17 T. 13 [N.] R. 19 East, M.M.," which are contiguous to the isolated tract in issue. On the "Certificate" the County Clerk and Recorder certified that Leona A. Chamberlain was the sole owner in fee simple of the lands described above as of September 24, 1972.

After these documents were submitted, the State Office issued the decision of October 17, 1972, which is the subject of this appeal. It rejected Davidson's preference right claim because the proof which he submitted did not show him to hold the "whole title to contiguous land in fee simple," as required by 43 CFR 2711.4(b)(2).

The regulation states in part that:

> Each preference ! right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30 ! day period. (Emphasis supplied).

To prove such ownership, the regulation requires that:

> Such proof must consist of (1) a certificate of the local recorder of deeds, or (ii) an abstract of title

> or a certificate of title prepared and certified by a title company or by an abstracting company, by a duly qualified attorney authorized to practice in the State stating on the basis of an examination of title records that the applicant owned adjoining land in fee simple on the last day of the 30!day period. (Emphasis supplied).

In his statement of reasons appellant's attorney states that "appellant Davidson does have the 'title in fee', as he is in just and legal possession of the contiguous property * * *." The attorney further states that under the land sales contract there remained an unpaid balance of $ 8,600 of a total purchase price of $ 76,375. He urges that a contract for deed should be accorded the same legal impact as a "deed over!mortgage back" transaction. We proceed to consider first the question whether the documents filed by appellant on October 13, 1972, satisfied regulatory requirements.

The regulation was worded as set forth above so that the personnel in the State Office will not be required to construe and rule upon claims of title and contracts of sale. It is clear that the certificate of the local recorder of deeds, naming Leona Chamberlain as the owner of the contiguous land in issue, is insufficient. Appellant's recital on the form that he holds a "contract for deed from Lawrence A Chamberlain and Leona A Chamberlain dated June 8, 1960" does not satisfy the regulations, since it does not fall within any of three categories spelled out in the regulation. See Jess R. Manuel, A-27482 (November 29, 1957); E. E. Larsen, A-27462 (September 17, 1957); William H. Boyd, A-27440 (June 3, 1957).

Appellant's showing on appeal was filed on November 20, 1972. He was required to submit proof of ownership of the whole title to contiguous lands on or before October 16, 1972. Under 43 CFR 2711.4(b)(2) "[e]ach preference right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands * * *." (Emphasis supplied.) Even if an assertion in a brief can be considered to be the "certificate" required by the regulations and not merely forensic in nature, the material filed on appeal by appellant was after the authorized date. We note that appellant did not request timely an extension of time to complete his proof.

The preference right provisions of the Public Lands Sale Act and regulations have been strictly construed. 1/ See Charles Kik,

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1/ We stated in Mildred M. Miller, 7 IBLA 363, 364 (1972) as follows:

"The requirement that the requisite proof of ownership be filed within the time specified by the authorized officer is mandatory.

A-27872 (December 1, 1959); Lawrence V. Lindbloom, A-27993 (August 4, 1959). Cf. Albert P. Comer, A-28150 (April 5, 1960). The rights of a good faith high bidder, as well as those of a contiguous landowner, are involved. Because we find that the proof filed on appeal was not timely, we do not address ourselves to the issue whether such proof, if timely filed, would have sufficed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Member

We concur:

Martin Ritvo
Member

Edward W. Stuebing
Member

Douglas E. Henriques
Member

Joseph W. Goss
Member

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fn. 1 (Cont.)
The regulation states it in terms that are clear and unambiguous. Further, the rights of the high bidder are involved. The Department has strictly construed the regulatory requirements imposed upon preference right applicants at public sales as a prerequisite to their establishing a preference right to purchase. Gene Van Matre, 6 IBLA 229 (1972); Ethel E. Tashoff, A-30262 (July 23, 1965); Fred and Mildred M. Bohen, 63 I.D. 65 (1956); Floyd J. Whittaker, Idaho 016007 (March 6, 1968); James E. Zajic, New Mexico 02560301 (January 2, 1968); see Frank Allison, 3 IBLA 317 (1971)."

MRS. THOMPSON DISSENTING:

The restrictive interpretation of the public sale regulations by the majority is not in accord with the letter or spirit of the Public Sale Act or with the manifested intent of the Department as reflected in changes in the regulations promulgated subsequent to the date of the decisions cited in the majority opinion.

The Public Sale Act, 43 U.S.C. § 1171 (1970), provides:

> * * * That for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price * * *. [Emphasis added.]

Departmental regulation 43 CFR 2711.4(b), sets forth the time for submitting proof and type of proof, as follows:

> Each preference ! right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30 ! day period. The authorized officer will specify that date. Such proof must consist of (i) a certificate of the local recorder of deeds, or (ii) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, or by a duly qualified attorney authorized to practice in the State stating on the basis of an examination of title records that the applicant owned adjoining land in fee simple on the last day of the 30 ! day period. If the preference ! right applicant does not own adjoining land at the close of the preference ! right period, his preference ! right claim will be lost. * * *

Within the time specified by the authorized officer, Davidson, the applicant for the sale, submitted proof consisting of a certificate from the county clerk and recorder that Leona A. Chamberlain was the sole owner in fee simple of lands contiguous to those offered at the sale on September 24, 1972. Davidson also certified that he held a "contract for deed, dated June 8, 1960, from Lawrence A. and Leona A. Chamberlain, the sole owners in fee simple." He explained that Lawrence A. Chamberlain had died, and he also submitted a copy of his contract with the certificate. It is apparent that Davidson thought he was complying with the regulation by submitting proof by the recorder of deeds of the person having the legal title and by

showing that he had a contract with that person giving him equitable title and beneficial ownership in the land. If we conclude, as will be discussed, infra, that Davidson, by the instrument which he submitted, held title to the land as an owner in fee simple under Montana State law at the required time, does the regulation mandate that his preference right be lost? I think not.

The regulation does not forbid the submission of proof in addition to the certificate of a local recorder of deeds. While one of the types of certificates must be submitted, the regulation is not clear as to the language to be stated in the certificate of the recorder of deeds. The statement following (ii) in the regulation that "the applicant owned adjoining land in fee simple on the last day of the 30 ! day period" could be read as pertaining only to the certificate listed under (ii), namely, by a "duly qualified attorney" or by a title or abstracting company, and not to the statement in (i) by the recorder of deeds. If other proof may be submitted to clarify the ownership, it should be considered by the authorized officer. If further clarification is needed, the authorized officer has the authority to extend that time to permit an applicant to submit additional clarifying proof. The majority would limit the authorized officer's authority to look at any proof other than the certificates prescribed in the regulation. This is unduly restrictive of his authority. The regulation does not expressly forbid him to do so. Therefore as applied to the circumstances of this case the regulation is ambiguous.

Where an applicant is to be deprived of a statutory preference because of his failure to comply strictly with the terms of a regulation, that regulation should be so clearly set forth that there is no reasonable basis for noncompliance. Georgette B. Lee, 3 IBLA 272, 276 (1971); S. Kilroy, 70 I.D. 520 (1963). If the regulation is not so clear that there is basis for noncompliance, it should be construed in favor of the applicant. A. M. Shaffer, 73 I.D. 293, 298 (1966). This is particularly true where the letter and spirit of the statute have not been violated. Cf. A. M. Shaffer, supra at 300. This is the case here.

In construing the regulation, the purpose of requiring proof to avoid administrative difficulties in ascertaining ownership should be weighed against the statutory right given to preference claimants so that the statutory right will not be defeated by needlessly restrictive interpretations. Cf. City of Chicago v. Federal Power Commission, 385 F.2d 629, 642-43 (D.C. Cir. 1967), cert. denied, 390 U.S. 945 (1968), where the Court stated:

> [W]hen an agency is exercising powers entrusted to it by Congress, it may have recourse to equitable conceptions in striving for reasonableness that broadly identifies the ambit of sound discretion. Conceptions of

> equity are not a special province of the courts, but may properly be invoked by administrative agencies.

The regulation can be construed so that the applicant's proof was acceptable when submitted. Cf. Ethel E. Tashoff, A-30362 (July 23, 1963). However, even if further proof or clarification is required, the regulation can and should be interpreted to permit such clarification now. By way of contrast, the public sale regulations now expressly provide that the preference right will be lost if the amount of the highest bid, or three times the appraised value, if three times the appraised value is less, is not submitted to the authorized officer prior to the termination of the 30!day period. 43 CFR 2711.4(b)(1). The regulations also provide that if the applicant does not own adjoining land at the close of the preference!right period, his preference!right claim will be lost. 43 CFR 2711.4(b)(2). These provisions are clear and the authorized officer is bound by them. There is no similar provision now regarding loss of preference right if proof filed within the time specified by the authorized officer is not completely satisfactory and needs clarification. This should also be contrasted with the regulations in effect at the time the decisions cited in the majority opinion were rendered, and prior to that time.

In 1949 the regulations provided for the assertion of a preference right within 30 days after the highest bid was received, and expressly provided that the right "must be supported by proof of the claimant's ownership of the whole title to the contiguous lands." 43 CFR 250.11(b)(1) (1949). There were no specific requirements as to the type of proof, simply the requirement of proof within the preference period time. The 1954 edition of the regulation added a new paragraph providing in part:

> Failure to submit to the land office satisfactory proof during the 30!day period after the highest bid has been received will cause the preference right to be lost as to the particular public sale. Such proof must consist of (a) a certificate of the local recorder of deeds, or (b) an abstract of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at or after the date of sale. * * * 43 CFR 250.11(b)(1)(ii) (1954).

Prior to this amendment of the regulation and despite the use of the word "must" in the regulation, Departmental decisions permitted proof of ownership filed during the preference period to be clarified or amended following appeals from the rejection of preference!right applications. E.g., Benjamin W. Brown, A-26428 (November 20, 1952); Mark Volk, A-26601 (May 5, 1953); and Charles H. Tomlin,

A-27134 (March 26, 1956). These decisions allowed additional proof to show ownership as of the end of the preference period. The Department even recognized preference right claims in others following submission of evidence on appeal. Some of these circumstances are discussed in Herma Werner Irvine, A-27031 (February 15, 1955), at 6 and 7, as follows:

> In other circumstances, the Department has been liberal in recognizing preference right claims. Thus, in Fred A. Van Horn et al., A-26316 (May 2, 1952), where an applicant for public sale who had claimed to be the owner of adjoining land turned out to hold the land only as a tenant in common with his wife, the Department allowed his preference right claim upon a showing that he had acted on behalf of his wife. In Hans Ewoldt et al., A-26171 (December 27, 1951), where the adjoining land was owned by the public sale applicant's father but the applicant and his father were in partnership, the Department held that the partnership should be considered as having applied for the sale and that it was a qualified preference right claimant. And, in Allen E. Weathers et al., A-25128 (May 27, 1949), where a bidder at the sale did not own land adjoining the tract awarded to him but his son owned adjoining land which was operated as a family ranch and which the son was willing to convey to the father, the Department held that it would be appropriate to allow the father, following such conveyance, to assert a preference right claim to the land awarded to him. See also Tollef N. Iverson et al., 59 I.D. 108 (1945), and Louis Olson et al., A-24143 (1946).

However, following the 1954 amendment of the regulations providing loss of the preference right where satisfactory proof was not filed during the 30 ! day period, Departmental decisions, such as those cited in the majority opinion, upheld the rejection of preference right applications where satisfactory proof was not filed within that time. They relied upon the new regulatory provision or other cases based upon that provision. Thus, where corrective amendments to proof were submitted on appeal, after the regulatory time period, the Department ruled that it was too late to accept them. E.g., Charles Kik, A-27872 (December 1, 1959); The Collier Company, A-28278 (June 10, 1960). Such cases were obviously the type referred to by the Assistant Solicitor, Land Appeals, author of many of the Departmental decisions applying the regulations, in a memorandum of February 6, 1964, to the Director, Bureau of Land Management, commenting upon proposed changes in the public sale regulations. The proposal included elimination of the regulatory time limitation for submitting satisfactory proof and the sanction provided in the 1954 regulation, and allowing the time to be established

by the authorized officer. The Assistant Solicitor recommended specific authority for the authorized officer to extend the time for filing such proof "in order to avoid some of the tough situations with which the Department has been confronted. * * *"

The regulations were so changed by Circular 2151, 29 F.R. 10463 (July 28, 1964), to avoid the harsh results stemming from the earlier rules, by permitting a certificate of title by a duly qualified attorney practicing in the state, and also by permitting the authorized officer to extend the time for submitting proof. Decisions decided under the old rules, and decisions made without regard to the deliberate change in the rules, should no longer be followed. Instead, the intent of the Department in changing the rules should be recognized.

Merely because the applicant did not expressly ask for an extension does not mean that the authorized officer could not sua sponte extend the time to clarify the proof. An applicant should not be penalized for submitting proof he reasonably believed was sufficient during the required time merely because he did not add a request for an extension if the proof was not completely satisfactory, while someone who does not submit anything other than a request for an extension within the time required is not penalized. If analogies are apt, situations allowing amendments or clarifications of final proof for entries after the time has expired, (Martin J. Plutt, A-26723 (August 17, 1953), (making such analogies); see also Ruth Gary, A-30309 (August 6, 1965)) have more persuasive force than decisions upholding the rejection of oil and gas lease applications, where the requirements of the regulations consistently have been strictly construed. E.g., American Mineral Petroleum Corporation, 10 IBLA 185 (1973). The oil and gas regulations clearly provide that failure to meet the requirements of the regulations requires the application to be rejected with loss of priority of filing. 43 CFR 3111.1-1(d) and 3111.1-2(a)(4). Except for offers filed in accordance with simultaneous drawing procedures, even defects in oil and gas offers are curable on appeal, giving the offer priority as of the time the defect is cured. E.g., William D. Sexton, 9 IBLA 316 (1973).

The filing of the acceptable application in oil and gas cases establishes the priority of the applicant. The preference given by the Mineral Leasing Act, 30 U.S.C. §§ 181 et seq. (1970), to noncompetitive applicants is based upon this priority of filing an application so that the "first qualified applicant" is entitled to a lease. While under the Public Sale Act a preference right must be submitted within a specified time, the submission of the preference right by an owner of contiguous lands establishes the right. Congress has granted a preference to contiguous owners if they meet the high bid (with certain limitations as to meeting the amount of

the bid). Congress has restricted the right of high bidders in public sale cases by giving the preference right to contiguous owners. This is very different from the situation obtaining under the Mineral Leasing Act, and implementing regulations thereunder. In all of the cases allowing a preference claimant under the Public Sale Act to clarify proof, which were decided prior to the restrictive regulations set forth in the 1954 edition to the regulation, high bidders were also involved. Now that the regulations have been changed, those cases should be followed rather than strict interpretations based on those superseded rules.

If Davidson had failed to submit preference right proof within the required period we would have a different situation. That was the case in Mildred Miller, 7 IBLA 363 (1972). Also, if he had failed to appeal within the time required, administrative finality would bar consideration of a subsequent tender of clarifying proof. Here, however, Davidson did appeal timely. This appeal suspended the effect of the decision rejecting his application. The authorized officer is entitled to extend the time to submit further evidence of ownership to clarify that submitted timely.

I am satisfied from reviewing the authorities that the purchaser under a contract such as that involved in this case has sufficient equitable and beneficial ownership of the land to be qualified as an "owner" within the meaning of the Public Sale Act and as further defined in the regulations. The word "owner" is nomen generalissimum, to be interpreted according to the context in and subject matter with which it is used, although usually as applied to real estate it means "fee simple." See cases collected at 30 WORDS & PHRASES, "Owner," 604 (1940). The word has often been interpreted to mean one holding only the equitable interest in land where the legal title is held by another, especially where the legal title is retained only as a security interest. Id. and cases cited, infra.

In interpreting who is entitled to the preference right, the regulations speak both of the ownership of the "whole title in fee" and also of proof that the applicant "owned adjoining land in fee simple." Common definitions of title in fee or in fee simple indicate an estate in which the owner is entitled to the entire property with unconditional power of disposition during his life, which descends to his heirs and legal representatives upon his death intestate, and to which there is no end or limit. E.g., BLACK'S LAW DICTIONARY, 742 (4th ed. 1951.) This is contrasted with an estate for a term of years or other time limitation. The regulations envisaged this difference by requiring proof of the whole title in fee and ownership in fee simple and not simply permitting proof of any limited ownership for a definite or indefinite term of years.

As stated by the Department in Howard M. Wilson, 63 I.D. 36, 38-39 (1956):

> In common usage, "whole title" or "title in fee" contemplates ownership in fee simple, that is, ownership of an estate of inheritance as distinguished from an estate for life or for years. Such an estate excludes all restrictions or qualifications as to the persons who may inherit as heirs.

In Wilson the Department ruled that the Navajo Tribe held "whole title in fee" within the meaning of the regulation, as it was the beneficial owner of the surface interests in the land, although the United States held naked legal title to the land, and although the minerals were held by another, being reserved to the grantor under a deed to the United States in trust for the Tribe.

Wilson establishes that this Department will look to the true beneficial ownership to determine the party entitled to a preference right under the Act and the regulations, even though the legal title resides in another. Likewise, in Brent L. Sellick, A-30007 (October 5, 1964), a preference claim was honored although the preference claimant had transferred the legal title under a land sale contract. The Department recognized there was no transfer of the right of possession and that the legal title was conveyed by the contract merely as a security interest. Although we do not have all the details of the transaction, the holder of the equitable, beneficial interest in the land was deemed to have the "whole title in fee," even though the legal title had been conveyed as a security interest. These cases recognize that the term "whole title in fee" should not be interpreted as limiting the preference right to a person who holds an estate completely unencumbered by any separation of the fee title for security or other purposes, where he has the beneficial ownership of the land.

While there are some differences between rights and obligations under a land sale contract giving the right of possession and other indicia of ownership and those where a purchaser receives a deed and conveys a mortgage, there is no reason under the Public Sale Act for differentiating between the two situations. In the first case the purchaser receives equitable title, while in the second he receives legal title. But in both uses he is regarded as the real or beneficial owner. And in both cases conditions of nonpayment to the holder of the security interest might defeat the purchaser's rights after appropriate actions by the holder of the security interest. 1/ I

1/ We note that the contract in this case requires the vendor to give 90 days notice after default in the purchaser's payments before the escrow agent may return the vendor's deed as a forfeiture. There is an unconditional right to delivery of the deed upon full payment

do not believe a mortgagor would be denied a preference right. Therefore, I see no justification for depriving the vendee under a sales contract of a preference right where under the terms of that contract and state law he has the beneficial ownership of the land in fee simple. It is anomalous to hold that Congress intended to treat the two cases differently. The regulations should be interpreted to accord with the purpose of the Act in allowing a preference right to an owner of contiguous lands. As in the Wilson and Sellick cases, it is the owner of the beneficial interest in the land in fee simple who should be afforded recognition as having the "whole title in fee" despite the fact that the bare legal title may reside in another for a limited purpose and time.

In other cases under the Public Sale Act involving co!tenants in contiguous land, a distinction was made between a tenant in common acting individually and independently, and a person holding as a joint tenant, with survivorship rights to all the land. The issue was whether the interest of the tenant was in lands contiguous to the lands in the sale to qualify him as a preference claimant. Because of the uncertainties as to what land a tenant in common and his heirs might have upon partition, he was not considered qualified by himself, but a joint tenant was. Fred A. Van Horn, A-26316 (May 2, 1952); Lansing D. Teeple, A-25870 (August 17, 1950); Mrs. Mercy E. Pyiatt, A-22400 (July 21, 1941). The fact that the joint tenant!preference right claimant's death would pass complete title to all the lands to the surviving joint tenant and his heirs did not prevent the Department from recognizing him as a beneficial owner and preference claimant. A fortiori, full equitable ownership of the present and future estate requires at least equal recognition. Any possibility of a subsequent condition of nonpayment and possible forfeiture action should not destroy the qualification of the equitable owner in the circumstances presented by this case.

The rulings of the Montana Court follow the majority rule in this country with respect to the question of the equitable ownership in fee under an executory land sale contract. 2/ Appellee has

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fn. 1 (Cont.)
of the money due under the contract terms. The deed is held by the escrow agent, a bank. The vendee has the right to possession of the land and all the other indicia of ownership, including the obligation to pay the taxes.

2/ With respect to land sales contracts, in Calvin v. Custer Co., 111 Mont. 162, 164, 107 P.2d 134, 136 (1940), the Montana Supreme Court stated:

"In the case of Town of Cascade v. County of Cascade, 75 Mont. 304, 243 P. 806, 808, it was said: 'It is the situation or character of the beneficial owner, the holder of the equitable title or

not shown that the interpretation is incorrect. He cites only statements and cases in other jurisdictions which are recognized as the minority position. 3/ His other contentions are without merit.

I would hold that a vendee under a land sale contract which grants possession and other requisites of fee simple ownership, with the legal title held by the vendor only as a security until all payments are made, shall be considered an owner of the whole

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fn. 2 (Cont.)
estate and not that of the holder of the legal title, * * * that determines the question of exemption from taxation under our constitutional provisions and those of like import.'

"In Kern v. Robertson, 92 Mont. 283, 12 P.2d 565, 567, we said: 'The authorities are in accord that an enforceable contract for the purchase and sale of real property passes to the purchaser the equitable and beneficial ownership thereof, leaving only the naked legal title in the seller, as trustee for the purchaser, and as security for the unpaid purchase price.'

"The rule is stated in 13 C.J. 855, as follows: 'A contract for the sale of land works a conversion, equity treating the vendor as holding the land in trust for the purchaser, and the purchaser as a trustee of the purchase price for the vendor. The vendor's interest thereafter in equity is in the unpaid purchase price, and is treated as realty.' To the same effect is 18 C.J.S., Conversion, § 9, p. 48, and 19 American Jur. ! Equitable Conversion ! ! sec. 11. In order for this principle of equitable conversion to apply, however, there must be a binding contract (66 C.J. 703), and such as a court of equity will specifically enforce against an unwilling purchaser. 13 C.J. 855; 3 Pomeroy's Equity Jurisprudence, 4th Ed., sec. 1161. See also to the same effect, Loma Linda University v. District Realty Title Ins. Corp., 443 F.2d 773 (D.C. Cir. 1971); Schultz v. Campbell, 147 Mont. 439, 413 P.2d 879 (1966); In re Lindhardt's Estate, 133 Mont. 65, 320 P.2d 357 (1958); In re Briebach's Estate, 132 Mont. 437, 318 P.2d 223 (1957); Epletveit v. Solberg, 119 Mont. 45, 169 P.2d 722 (1946). See Loma Linda University v. District Title Ins. Corp., supra; Annot. 27 A.L.R. 3rd 572, 578-79 (1969).

3/ For example, he refers to a statement that "[a]n executory forfeitable contract for the purchase of land vests no element of title, either legal or equitable." 55 AM. JUR. Vendor and Purchaser § 357, p. 784 (1946). This statement is based upon a rule in the State of Washington, Frye v. King Co., 151 Wash. 179, 275 P. 547 (1929), following the rule established in Ashford v. Reese, 132 Wash. 649, 233 P. 29 (1925), which is now in disrepute, Griffith v. Whittier, 37 Wash.2d 351, 223 P.2d 1062 (1950); and see Windust v. Dep't of Labor and Industries, 52 Wash.2d 33, 323 P.2d 241 (1958). The rule is the minority view. See note 2.

title in fee within the meaning of the Public Sale Act and the regulations. 4/ I would set aside the decision and remand this case for proceedings consistent with this opinion.

Joan B. Thompson
Member

We concur:

Newton Frishberg
Chairman

Anne Poindexter Lewis
Member

4/ This conclusion is supported by other cases under the public land laws determining a vendee under a contract for the sale of land to be the "owner," within the meaning of the law. In Carter Blanchford, 53 I.D. 613, 614 (1932), and cases cited therein, the vendor was seen merely to retain the legal title as security for the unpaid balance of the purchase price. In Frank O'Mea, 10 IBLA (1973), a buyer in possession of improvements under a conditional sales agreement was considered an "owner" under the Mining Claims Occupancy Act, 30 U.S.C. § 702 (1970). A request for reconsideration of the O'Mea case has been denied. See also SRA, Inc. v. Minnesota, 327 U.S. 558 (1946).